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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,987	06/24/2003	Daniel J. Decker	C1084A	9091

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EXAMINER

REDMAN, JERRY E

ART UNIT PAPER NUMBER

3634

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/601,987

Applicant(s)

DECKER ET AL.

Examiner

Jerry Redman

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Applicant's election without traverse (based on cancellation of non-elected claims) of Group I-claims 1-12 in the reply filed on 11/9/2004 is acknowledged.

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 3, lines 8-9, the phraseology "for resisting flow of the fluid between the reservoir and the cylinder with the gate is swinging" is not readily understood by the Examiner. In claim 1, lines 1-2, it is not readily apparent to the Examiner if the applicant is claiming a gate regulator or a gate regulator in combination with a gate and stationary wall. Throughout the claims the applicant clearly and positively recites the gate and the stationary wall. If the applicant intends to claim the combination then the applicant must clearly and positively set forth the gate and the stationary wall in the preamble.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are further rejected under 35 U.S.C. 102(b) as being anticipated by Piegza. Piegza discloses a gate regulator comprising a gate (10), a stationary wall (12), a regulator bracket (80) mounted to the stationary wall (12), a mounting plate (88)

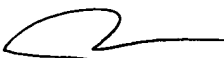
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fastened to the gate (10) so that the gate (10) is swingable between a first and second position, a means for controlling (104 and 126) the gate (10) to swing about a horizontal axis (40) without restriction (126 is not operable and 104 is operable) in a first direction (upwardly) from a first position (closed) and toward a second position (fully opened) and to swing with restriction (126 is operable halfway up to a fully opened position and then from the fully opened positioned to halfway down towards a closed position and 104 is not operable) in a second direction (towards a closed position) from the second position (fully opened) toward the first position (fully closed), a fluid cylinder (36a) having a first member (at element 80) pivotally connected to the regulator bracket (80) and a second member (36b) connected to the mounting plate (88), means for cooperating (122 and 132) with the cylinder to control the gate (10) to swing without restriction in the first direction and with restriction in the second direction, a fluid reservoir (90, column 4, lines 35-38), first and second lines (120 and 130) connecting the fluid reservoir to the cylinder, means for permitting unrestricted flow of fluid (98) between the reservoir and the cylinder and for resisting flow of the fluid between the reservoir and the cylinder, and means for overriding (124) the means for controlling (126) the gate (10) when the gate (10) swings in the second direction (downwardly) and reaches a third position (the position between the first and second position in which the operation of the movement of the gate (10) is changed over from the top cylinder (36) to the side cylinders).

Claims 5-12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. patent to Auer et al. discloses a cylinder drive for a swinging closure similar to that of the applicant's invention. U.S. patent application to Kennedy et al. disclose a cylinder assembly driving a swinging closure between open and closed positions similar to that of the applicant's invention. U.S. patent to Lunenschloss et al. disclose a variable speed door operator for a swinging closure similar to that of the applicant's invention. U.S. patent to Jennings discloses a cylinder for a swinging closure on a vehicle similar to that of the applicant's invention. U.S. patent to Beran discloses a door drive assembly having a spring/fluid cylinder similar to that of the applicant's invention.

Any inquiry concerning this communication should be directed to Jerry Redman at telephone number 703-308-2120.


Jerry Redman
Primary Examiner